

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Anastasia Plakas	Team: Squad #6	CCRB Case #: 201402042	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 03/01/2014 9:34 PM	Location of Incident: East 168th Street and 3rd Avenue and the 42nd Precinct Stationhouse	Precinct: 42	18 Mo. SOL 9/1/2015	EO SOL 9/1/2015	
Date/Time CV Reported Sun, 03/02/2014 2:25 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/04/2014 9:15 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Lee	19325	952975	PBBX
2. SGT Keith Laliberte	00868	920488	PBBX
3. POM Paul Munrett	09022	953156	PBBX
4. POM Edwin Peguero	24835	953225	PBBX
5. POM Gustavo Ochoa	12454	953189	PBBX
6. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Brendan Mcguigan	2904	921558	PBBX
2. POM Enmanuel Rosario	22023	946190	PBBX
3. POM Wilson Lozada	01633	953015	PBBX
4. DT3 Daniel Brady	00959	924976	042 DET
5. POM Domingo Arjona	05689	944331	PBBX
6. POM Raymond Barrett	08126	952444	PBBX
7. POM Alejandro Ochoa	17600	955267	PBBX
8. POM Christophe Wintermute	03805	953574	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM James Lee	Abuse: PO James Lee searched the car in which § 87(2)(b) was an occupant at East 168th Street and 3rd Avenue in the Bronx.	
B.SGT Keith Laliberte	Force: Sgt. Keith Laliberte used pepper spray against § 87(2)(b) at East 168th Street and 3rd Avenue in the Bronx.	
C. Officers	Force: Officers used physical force against § 87(2)(b) at East 168th Street and 3rd Avenue in the Bronx.	
D.POM Edwin Peguero	Force: PO Edwin Peguero used physical force against § 87(2)(b) at the 42nd Precinct Stationhouse.	
E.POM Gustavo Ochoa	Force: PO Gustavo Ochoa used physical force against § 87(2)(b) at the 42nd Precinct Stationhouse.	

Officer(s)	Allegation	Investigator Recommendation
F.POM Paul Munrett	Force: PO Paul Munrett struck § 87(2)(b) with an asp at the 42nd Precinct Stationhouse.	
G. Officers	Force: Officers used physical force against § 87(2)(b) at the 42nd Precinct Stationhouse.	

Case Summary

Sgt. Brendan McGuigan of PBBX IRT filed this complaint with IAB via telephone on March 2, 2014, generating IAB Log No. 2014-7692 (encl. 1W-1X, 7P-7Q). § 87(2)(b) filed a duplicate complaint with the CCRB via telephone on March 4, 2014 (encl. 1Y-2B). On April 8, 2014, § 87(2)(b)'s attorney, § 87(2)(b), advised the CCRB that § 87(2)(b) would not provide a statement while his criminal case was ongoing and the case was closed. On January 28, 2015, the CCRB received a letter from § 87(2)(b) requesting this case be reopened (encl. 2J). The request was approved by Acting Executive Director Brian Connell on January 29, 2015 (encl. 1A).

On March 1, 2014, at approximately 9:34 p.m., § 87(2)(b) was seated in his vehicle near the intersection of East 168th Street and 3rd Avenue in the Bronx. § 87(2)(b) was approached by PO James Lee, PO Gustavo Ochoa, and Sgt. Keith Laliberte of Patrol Borough Bronx Impact Response Team. § 87(2)(b) was asked to exit his vehicle and complied, at which point his vehicle was searched (**Allegation A**). The officers attempted to place § 87(2)(b) under arrest and Sgt. Laliberte used his pepper spray against § 87(2)(b) (**Allegation B**). Additional officers responded to the location. § 87(2)(b) alleged that several officers punched him 15 to 25 times over the course of five minutes (**Allegation C**) before he was placed in handcuffs and taken to the 42nd Precinct Stationhouse.

In the holding cell area at the 42nd Precinct Stationhouse, his handcuffs were removed and § 87(2)(b) was either asked to remove his shoes and socks or his shoelaces. PO Edwin Peguero punched § 87(2)(b) several times in the face (**Allegation D**) and PO Gustavo Ochoa kicked § 87(2)(b) several times in the face (**Allegation E**). While officers attempted to place § 87(2)(b) back in handcuffs, PO Paul Munrett struck § 87(2)(b) several times with his asp (**Allegation F**). § 87(2)(b) alleged that additional officers punched him and that, after he was placed in handcuffs, officers lifted him in the air and threw him into a holding cell (**Allegation G**).

§ 87(2)(b) was taken by ambulance to § 87(2)(b), where he was diagnosed with a right medial orbital wall fracture, a right orbital floor fracture, and displaced fractures of the left transverse processes at L2 and L3 (See Medical Records).

Mediation, Civil, and Criminal Histories

Because § 87(2)(b) sustained serious injuries as a result of the incident, the case was deemed unsuitable for mediation. § 87(2)(b)'s attorneys, § 87(2)(b), filed a Notice of Claim on his behalf for five million dollars (encl. 9H-9I). On § 87(2)(b), the 50-H hearing was adjourned to § 87(2)(b) (encl. 9J). However, as of June 2, 2015, a 50-H hearing for this case had not been held (encl. 18G-18H). § 87(2)(b) § 87(2)(c)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- PO Lee has been a member of the NYPD for two years and has had one previous CCRB case, which did not result in any substantiated allegations. His previous case did not involve an abuse of authority allegation (encl. 1P).
- Sgt. Laliberte has been a member of the NYPD for 17 years and has had nine previous CCRB cases, three of which involved substantiated allegations. § 87(2)(g) [REDACTED]: two of his previous cases involve force allegations, one of which was substantiated with charges (enc. 1Q-1R).
- PO Peguero has been a member of the NYPD for two years and has had four other CCRB cases, which did not result in any substantiated allegations. § 87(2)(g) [REDACTED]
- PO Gustavo Ochoa has been a member of the NYPD for two years and has four previous CCRB cases, one of which involved a substantiated allegation. § 87(2)(g) [REDACTED] two of his previous cases involve force allegations, none of which were substantiated (encl. 1T).
- PO Munrett has been a member of the NYPD for two years. This is his first CCRB case (encl. 1U).
- This is the first CCRB complaint filed by § 87(2)(b) [REDACTED] (encl. 1V).

Witnesses

During their investigation, IAB identified and interviewed § 87(2)(b) [REDACTED] a witness to the allegations which occurred at the 42nd Precinct Stationhouse. § 87(2)(b) [REDACTED] was interviewed by IAB on March 3, 2014 (encl. 3D-3I). He provided a statement about the incident and, through photo arrays, identified PO Lee and Sgt. McGuigan as being present. § 87(2)(b) [REDACTED] also identified PO Peguero as the officer who punched § 87(2)(b) [REDACTED] (encl. 3J-3N). On February 23, 2015, § 87(2)(b) [REDACTED] was contacted by the CCRB and provided an unverified telephone statement about the incident (encl. 3O-3P). § 87(2)(b) [REDACTED]'s two statements, taken almost a year apart, were remarkably consistent. § 87(2)(b) [REDACTED] subsequently missed his scheduled interview on March 2, 2015 and did not respond to numerous contact attempts to reschedule.

Findings and Recommendations

Allegations not pleaded

Allegation—Vehicle Stop: In each of his statements, § 87(2)(b) [REDACTED] stated that, prior to the start of the incident, he was seated in his vehicle, which was located at East 168th Street and 3rd Avenue in the Bronx. § 87(2)(b) [REDACTED] stated that the vehicle's engine was off and the keys were not in the ignition. § 87(2)(b) [REDACTED] noted that he was not parked directly next to the curb, because there was snow on the street, but denied that he was double parked and stated that he was in a legal parking spot (encl. 1Y-2B, 2E-2I, 2K-2R, 2U-2Y). In their CCRB statements, PO Lee and PO Gustavo Ochoa noted that § 87(2)(b) [REDACTED]'s vehicle was double parked for a period of 30 minutes before they approached (encl. 4X-5D, 6J-6N). Sgt. Laliberte did not state that the vehicle was double parked, but noted that it was at the intersection of East 168th Street and 3rd Avenue and obstructed traffic (encl. 3T-3W). In both his memo book and interview, PO Lee noted that § 87(2)(b) [REDACTED] was double parked and that he was issued a summons for double parking (encl. 4J-4N, 4X-5D). § 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

§ 87(2)(g) [REDACTED]

Allegation—Frisk: § 87(2)(b) never alleged that a frisk or search was performed at either the initial location or the stationhouse (encl. 1Y-2B, 2E-2I, 2K-2R, 2U-2Y). In his CCRB interview, PO Lee acknowledged that one of the officers frisked § 87(2)(b) after he had exited his vehicle to determine whether he had any weapons. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation—Strip-Search: While Sgt. McGuigan noted in his initial call to IAB that § 87(2)(b) had resisted a strip-search inside the holding cell area (encl. 7P-7Q), PO Lee, § 87(2)(b) § 87(2)(b)'s arresting officer did not observe a strip-search conducted. In his CCRB interview, PO Lee first stated that he was not aware of any conversation between officers and a supervisor about a strip-search, but then stated that he did not recall hearing any conversation. However, PO Lee noted that he did not know what, if anything, had occurred prior to his entering the holding cell area (encl. 4X-5D). In his CCRB interview, PO Munrett stated that officers did not strip-search § 87(2)(b). However, PO Munrett did not know if he, PO Peguero, or PO Lee requested authorization for a strip-search and did not recall any conversation with a supervisor regarding a strip-search (encl. 4D-4H). In his CCRB interview, when asked if § 87(2)(b) had been strip-searched, PO Peguero stated that the officers did not have the chance to do so. When asked if a strip-search would have been conducted, PO Peguero explained that strip-searches are conducted at the discretion of the arresting officer if they have a reason to believe the defendant has drugs. The decision to conduct a strip-search was not in PO Peguero's hands. PO Peguero was not aware if PO Lee stated that he planned to conduct a strip-search. PO Peguero did not hear any conversation between PO Lee and any supervisor about a strip-search (encl. 5K-5P). In his CCRB interview, PO Wintermute noted that he never heard any conversation about a strip-search and did not observe a strip-search of § 87(2)(b) conducted (encl. 5V-5Y).

In his CCRB interview, PO Gustavo Ochoa noted that § 87(2)(b) was asked to remove his clothes for a strip-search. However, he did not know why a strip-search was being conducted of § 87(2)(b) and had not heard any conversation between officers about conducting a strip-search (encl. 6J-6N). Sgt. McGuigan, who was identified by IAB as a subject officer of their own investigation, was scheduled four times for a CCRB appearance, but never attended or provided a statement: on the first occasion, he had a vacation day; on the second occasion, he had a court day; and on the third and fourth occasions, the CCRB was unable to confirm with PBBX IRT if Sgt. McGuigan was ever notified. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation—Taser: In his initial IAB complaint, § 87(2)(b) stated that an officer in the holding cell area might have used a Taser against him (encl. 1Y-2B). He did not reiterate that statement during his verified telephone statement (2U-2Y). PO Peguero was the only officer who mentioned a Taser gun. In his CCRB interview, he stated that he observed Sgt. McGuigan hold a yellow Taser gun, point it at § 87(2)(b) and pull it. However, PO Peguero could not see what part of § 87(2)(b)'s body the Taser made contact with and did not hear the noise of the Taser. PO Peguero did not know why Sgt. McGuigan was unsuccessful in using the Taser and stated it might have been a malfunction or because of the fighting (encl. 5K-5P). § 87(2)(b)'s medical

records from § 87(2)(b) did not indicate any injuries consistent with or attributable to a Taser.

As discussed above, the CCRB was unable to obtain a statement from Sgt. McGuigan about his involvement in the incident. § 87(2)(g)

Explanation of subject officer identification

In their CCRB interviews, all of the subject officers in the present case acknowledged interacting with § 87(2)(b). PO Lee acknowledged conducting a search of § 87(2)(b)'s vehicle after § 87(2)(b) had exited (encl. 4X-5D). Sgt. Laliberte acknowledged discharging his pepper spray against § 87(2)(b) while attempting to handcuff him (encl. 3T-3W). During the second attempt to handcuff § 87(2)(b) at the stationhouse, PO Peguero acknowledged punching § 87(2)(b) (encl. 5K-5P), while PO Gustavo Ochoa acknowledged punching § 87(2)(b) several times (encl. 6J-6N) and PO Munrett acknowledged striking § 87(2)(b) with his asp several times (encl. 4D-4H). § 87(2)(g)

Multiple officers responded to East 168th Street and 3rd Avenue after § 87(2)(b) had been struck by pepper spray. § 87(2)(b) alleged that a number of these officers punched him, approximately 15 to 25 times over the course of five minutes. § 87(2)(b) did not know how many officers struck him or if any of the initial officers at the location (PO Lee, PO Gustavo Ochoa, or Sgt. Laliberte) struck him. § 87(2)(b)'s eyes were closed due to the pepper spray and he did not see the majority of the incident (encl. 2U-2Y).

In addition to the physical force used by PO Peguero, PO Gustavo Ochoa, and PO Munrett at the 42nd Precinct Stationhouse, § 87(2)(b) further alleged that additional uniformed officers ran into the holding cell area and punched him. After § 87(2)(b) had been handcuffed a second time, he alleged that three of four officers lifted him up and threw him into the cell (encl. 2U-2Y).

None of the officers interviewed acknowledged punching § 87(2)(b) at East 168th Street and 3rd Avenue or observing any officer do so. All of the officers also denied using additional physical force against § 87(2)(b) at the first location or observing any officer do so. Furthermore, aside from the admitted use of force discussed below (by PO Peguero, PO Gustavo Ochoa, and PO Munrett), all of the officers who were present at the stationhouse denied using additional physical force against § 87(2)(b) including punching him, kicking him, or throwing him into a cell (encl. 3T-3W, 4D-4H, 4X-5D, 5K-5P, 5V-5Y, 6E-6F, 6J-6N). § 87(2)(g)

Allegation A—Abuse of Authority: PO James Lee searched the car in which § 87(2)(b) was an occupant at East 168th Street and 3rd Avenue in the Bronx.

It is undisputed that PO Lee searched § 87(2)(b)'s vehicle on March 1, 2014 after § 87(2)(b) had exited it.

Whenever any property comes into the custody of [the] Department an inventory search will be conducted. The purpose...[is] to protect uniformed members of the service and others against dangerous instrumentalities. NYPD Patrol Guide 218-13 (encl. 1B-1C).

In his written statement and his CCRB interview, § 87(2)(b) alleged, after he was asked to exit his vehicle, he stood at the rear of his vehicle while an officer, identified through investigation as PO Lee, searched the interior for approximately four minutes before telling the other two officers, identified through investigation as Sgt. Laliberte and PO Gustavo Ochoa, to arrest § 87(2)(b) (encl. 2K-2R, 2U-2Y).

In his CCRB statement, PO Lee stated that § 87(2)(b) smelled of alcohol, had glassy and bloodshot eyes, and spoke with slurred speech. Based on his observations, PO Lee determined that § 87(2)(b) was to be placed under arrest for being intoxicated. As a result, PO Lee conducted an inventory search of § 87(2)(b)'s vehicle to ensure that there was nothing in the vehicle which could harm any officer while the vehicle was being transported. PO Lee stated that the search was for § 87(2)(b)'s and officers' safety to know the contents of the vehicle. At the prompting of his representative, PO Lee noted that the vehicle was going to be taken back to the stationhouse following the arrest (encl. 4X-5D).

§ 87(2)(g)
[REDACTED]

Allegation B—Force: Sgt. Keith Laliberte used pepper spray against § 87(2)(b) at East 168th Street and 3rd Avenue in the Bronx.

It is undisputed that Sgt. Laliberte discharged his pepper spray against § 87(2)(b) on March 1, 2014 at East 168th Street and 3rd Avenue.

Oleoresin Capsicum (O.C.) pepper spray may be used when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting emotionally disturbed person into custody. NYPD Patrol Guide 212-95 (encl. 1D-1G).

In his written statement and his CCRB interview, § 87(2)(b) stated that, immediately after PO Lee told PO Gustavo Ochoa and Sgt. Laliberte to arrest § 87(2)(b) he asked why he was being arrested. § 87(2)(b) alleged that one of the two officers, identified through investigation as Sgt. Laliberte, discharged his pepper spray against § 87(2)(b) with no warning (encl. 2K-2R, 2U-2Y). In his interview, § 87(2)(b) specified that the pepper spray was discharged for between 30 seconds and one minute; that it struck the right side of his face, and his eyes; and that he did not say anything in response to the officers (encl. 2U-2Y).

In their CCRB statements, Sgt. Laliberte, PO Lee, and PO Gustavo Ochoa all stated that, as soon as they attempted to place § 87(2)(b) in handcuffs, he began to resist by flailing his arms, pushing the officers off of him, and moving from the rear of his vehicle to the front in an attempt to flee, even as the officers continued attempting to place § 87(2)(b) under arrest. Sgt. Laliberte, PO Lee, and PO Gustavo Ochoa also noted that they issued § 87(2)(b) multiple commands, telling him to stop resisting and to place his hands behind his back (encl. 3T-3W, 4X-5D, 6J-6N).

After issuing § 87(2)(b) numerous verbal commands to gain his compliance, Sgt. Laliberte discharged his pepper spray against § 87(2)(b). He cited two reasons for doing so: first, that he was afraid that if he used too much force against § 87(2)(b) he would get in trouble; and second, because he knew that pepper spray was non-lethal and he wanted to use non-lethal force to get § 87(2)(b) to comply. Sgt. Laliberte also noted that the use of pepper spray represented a progression of force. Sgt. Laliberte was several feet away from § 87(2)(b) and discharged his pepper spray in one stream for approximately one second, aiming at § 87(2)(b)'s eyes. The pepper spray had no effect on § 87(2)(b) who did not react to it. However, the pepper spray "bounced off" § 87(2)(b)'s head and into Sgt. Laliberte's face. Sgt. Laliberte stated that PO Lee was not affected by the pepper spray, although PO Lee noted in his interview that it did hit him in his face (encl. 3T-3W, 4X-5D).

After the pepper spray had been discharged, § 87(2)(b) continued to resist and make the same movements. According to PO Lee and PO Gustavo Ochoa, § 87(2)(b) was not brought under control until a request for additional units had been called and additional officers responded. Sgt. Laliberte was injured during the attempt to place § 87(2)(b) in handcuffs and did not observe how it was eventually accomplished (encl. 3T-3W, 4X-5D, 6J-6N).

§ 87(2)(g)
[REDACTED]

Allegation C—Force: Officers used physical force against § 87(2)(b) at East 168th Street and 3rd Avenue in the Bronx.

In his intake call, § 87(2)(b) alleged that two of the officers who initially stopped him hit him in the face and head before additional officers arrived to the first location and also hit and kicked him (encl. 1Y-2B). In his IAB interview, § 87(2)(b) alleged that he was thrown to the ground, punched, and kicked by the responding officers (encl. 2E-2I). In his written statement, § 87(2)(b) alleged that he was hit repeatedly by the initial three officers at the location before being handcuffed and taken to the 42nd Precinct Stationhouse (encl. 2K-2R). In his CCRB interview, § 87(2)(b) alleged that a number of the responding officers punched him, approximately 15 to 25 times over the course of five minutes. § 87(2)(b) did not know how many officers struck him or if any of the initial officers at the location (PO Lee, PO Gustavo

Ochoa, or Sgt. Laliberte) struck him. § 87(2)(b)'s eyes were closed due to the pepper spray and he did not see the majority of the incident (encl. 2U-2Y).

None of the officers interviewed acknowledged punching § 87(2)(b) at East 168th Street and 3rd Avenue or observing any officer do so. All of the officers also denied using additional physical force against § 87(2)(b) at the first location or observing any officer do so (encl. 3T-3W, 4D-4H, 4X-5D, 5K-5P, 5V-5Y, 6E-6F, 6J-6N). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation D—Force: PO Edwin Peguero used physical force against § 87(2)(b) at the 42nd Precinct Stationhouse.

Allegation E—Force: PO Gustavo Ochoa used physical force against § 87(2)(b) at the 42nd Precinct Stationhouse.

Allegation F—Force: PO Paul Munrett struck § 87(2)(b) with an asp at the 42nd Precinct Stationhouse.

It is undisputed that PO Peguero and PO Gustavo Ochoa used physical force against § 87(2)(b) in the holding cell area at the 42nd Precinct Stationhouse. It is also undisputed that PO Munrett struck § 87(2)(b) with his asp while in the holding cell area. However, the amount of force used by PO Peguero and PO Gustavo Ochoa is in dispute.

Only that amount of force necessary to overcome resistance will be used to effect an arrest. NYPD Patrol Guide 203-11 (encl. 1H-1I).

In all four of his statements, § 87(2)(b) alleged that he was struck by an officer several times while in the holding cell area (encl. 1Y-2B, 2E-2I, 2K-2R, 2U-2Y). When interviewed by IAB, § 87(2)(b) identified PO Peguero through a photo array as the officer who hit him several times before other officers joined in and began to hit him (encl. 2G-2I). In his written statement, § 87(2)(b) alleged that the same officer told him, “It’s going to be your way or my way” (encl. 2K-2R). § 87(2)(b) further alleged that he was kicked by multiple officers while he lay on the ground and that he was struck with an unknown object on the right side of his body. Although § 87(2)(b) could not describe the size or shape of the object, he was able to differentiate it from the blows that came from hands and feet (encl. 2U-2Y).

During their investigation, IAB identified and interviewed § 87(2)(b) a witness to the allegations which occurred at the 42nd Precinct Stationhouse. § 87(2)(b) was interviewed by IAB on March 3, 2014. He identified PO Peguero through a photo array as the officer who punched § 87(2)(b) in the face six to seven times. § 87(2)(b) also identified a white male officer, approximately 5’6” tall and wearing glasses (encl. 3J-3N). IAB’s investigation initially listed PO Alejandro Ochoa as a subject; however, PO Alejandro Ochoa worked within the confines of the 43rd Precinct on March 1, 2014, never responded to the call for additional units, and was not present in the 42nd Precinct Stationhouse at any point during his tour (encl. 6A-6C, 6E-6F). PO Lee and PO Peguero both acknowledged that PO Gustavo Ochoa was involved in the struggle to place § 87(2)(b) in handcuffs at the stationhouse and PO Gustavo Ochoa placed himself in the immediate vicinity of § 87(2)(b)'s head at the time that the force took place (encl. 4X-5D, 5K-5P, 6J-6N).

§ 87(2)(b) observed PO Peguero “poke” § 87(2)(b) with his asp, while a second white male officer, identified through investigation as PO Munrett, struck § 87(2)(b) four to five times with his asp. § 87(2)(b) did not observe § 87(2)(b) swing at any officer, although he noted that § 87(2)(b) refused to go to the ground. § 87(2)(b) observed § 87(2)(b) bleeding from his face after he was brought to the ground and handcuffed, which he attributed to § 87(2)(b) being punched and kicked in the face. § 87(2)(b) had not observed any injury on § 87(2)(b) before he was brought to the ground (encl. 3D-3I).

§ 87(2)(b) provided an unverified telephone statement to the CCRB on February 23, 2015, almost one year after the incident date. § 87(2)(b)'s CCRB statement was remarkably consistent with his IAB statement, considering the amount of time that had passed and the fact that he was an independent witness with no personal connection to the case. § 87(2)(b) stated that three officers grabbed § 87(2)(b) tried to trip him, and pushed § 87(2)(b) into the Livescan fingerprinting machine. After that point, PO Peguero punched § 87(2)(b) four to five times in the face. § 87(2)(b) was then tripped to the ground by an unidentified officer, who matched § 87(2)(b)'s earlier description of PO Gustavo Ochoa. § 87(2)(b) stated that two to three officers punched and kicked § 87(2)(b) while another, identified through his own testimony as PO Munrett, struck § 87(2)(b) with an asp. While on the ground, § 87(2)(b) eventually stopped struggling, at which point he was handcuffed, picked up, and placed in a cell (encl. 3O-3P).

In his CCRB statement, PO Peguero acknowledged telling § 87(2)(b) either, “Make it easy on yourself. Don’t make it hard on yourself” or, “Sir, you can make it easy on yourself or you can make it difficult. Don’t make it difficult.” PO Peguero stated that § 87(2)(b) became irate, yelled, “You don’t know me,” and stood up from his chair. At that point, § 87(2)(b) was not in handcuffs. PO Peguero stated that § 87(2)(b) lunged at him with his arms raised and his chest leaning forward. § 87(2)(b) also raised his right hand backwards as though rearing to punch. PO Peguero did not recall if his hands were open or closed. These movements indicated to PO Peguero that § 87(2)(b) intended to hit him. PO Peguero took a step back in response.

After a brief struggle by other officers to restrain § 87(2)(b) he attempted to punch PO Peguero a second time. PO Peguero moved back in order to avoid being hit and punched § 87(2)(b) with a closed fist, striking him in the area of his left shoulder and neck. PO Peguero had aimed for § 87(2)(b)'s chest. His purpose in striking § 87(2)(b) was to take the air out of him and be able to bring § 87(2)(b) down.

According to PO Peguero, § 87(2)(b) attempted to tackle PO Gustavo Ochoa. PO Peguero then pushed § 87(2)(b) on the shoulder with one hand, causing § 87(2)(b) to lose his balance and fall. PO Peguero stated that § 87(2)(b) continued fighting and moving his body while on the ground. PO Peguero placed his knee on § 87(2)(b)'s lower back to keep him on the ground. Despite this, § 87(2)(b) was able to get back to his feet. PO Peguero and other officers pushed § 87(2)(b) back to the ground. § 87(2)(b) then rose to his hands and knees, at which point PO Peguero struck § 87(2)(b) with his knee on § 87(2)(b)'s leg and his side to bring § 87(2)(b) back to the ground.

Aside from the one punch he described, PO Peguero stated that he did not punch, kick, or step on § 87(2)(b)'s face or observe any officer do so. He also denied using additional force against § 87(2)(b).

§ 87(2)(b) or observing any officer do so. PO Peguero also denied using a asp or observing any officer do so (encl. 5K-5P).

In his CCRB statement, PO Gustavo Ochoa stated that § 87(2)(b) was asked multiple times to removed his shoes. After approximately one minute, § 87(2)(b) stood up from a seated position, while still uncuffed, and became aggressive towards officers. § 87(2)(b) tried to swing at one of the officers. PO Gustavo Ochoa did not recall who § 87(2)(b) swung at and did not see if § 87(2)(b) made contact with the officer. There were approximately three to four officers in the holding cell area who attempted to place § 87(2)(b) handcuffs, including PO Gustavo Ochoa. As § 87(2)(b) was brought to the ground, he grabbed onto one of PO Gustavo Ochoa's ankles with both of his hands and twisted it.

PO Gustavo Ochoa attempted to get § 87(2)(b) off of him by using his fists and punching § 87(2)(b) approximately three to five times in the upper body and facial area. PO Gustavo Ochoa did not recall if he took any other action to break § 87(2)(b)'s grip, such as trying to remove § 87(2)(b)'s hands from his too. In response to PO Gustavo Ochoa's punches, § 87(2)(b) released PO Gustavo Ochoa. PO Gustavo Ochoa did not recall if § 87(2)(b) tried to grab onto any other part of PO Gustavo Ochoa's body. PO Gustavo Ochoa did not observe any other officer punch § 87(2)(b). He denied kicking § 87(2)(b) or stepping on his face or observing any officer do so (encl. 6J-6N).

In his CCRB statement, PO Munrett stated that § 87(2)(b) was asked to remove his shoes and refused, at which point he stood up, while uncuffed, and made a furtive movement, drawing his fists back and puffing out his chest. PO Munrett reviewed his memo book and noted that verbal compliance prompts were given to § 87(2)(b) who ignored them. PO Munrett believed that it was necessary to use force to restrain § 87(2)(b) in response to his actions. PO Munrett then extended his asp and struck § 87(2)(b) approximately three to four times on one of his legs and then on the same side of his body. PO Munrett did not know which leg he struck. PO Munrett's intent in using his asp was to subdue § 87(2)(b) and recontrol the situation because § 87(2)(b) was uncuffed and posed harm to the officers. PO Munrett's goal was to place § 87(2)(b) back in handcuffs. In response to being struck, § 87(2)(b) fell to the floor on his side as several officers attempted to place him in handcuffs. PO Munrett did not recall if he punched § 87(2)(b) and could not say if he observed any officer punch § 87(2)(b). He denied kicking § 87(2)(b) or observing any officer do so (encl. 4D-4H).

In his CCRB statement, PO Lee denied punching, kicking, or stomping on § 87(2)(b) or observing any officer do so. PO Lee denied using his asp, but observed one unidentified officer use his asp and push down on § 87(2)(b)'s back to bring him to the ground (encl. 4X-5D). In his CCRB interview, PO Wintermute denied punching, kicking, or stepping down on § 87(2)(b)'s face or observing any officer do so. PO Wintermute did not use his asp or observe any officer use a asp (encl. 5V-5Y).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

PO Gustavo Ochoa matched § 87(2)(b)'s description of the officer who kicked § 87(2)(b) in the face: although he is a Hispanic male, he has a very light complexion, stands 5'6" tall, and was wearing glasses at the time of his CCRB interview (encl. 6NN). Furthermore, PO Gustavo Ochoa stated that § 87(2)(b) grabbed onto his ankle with both hands and twisted it so seriously that PO Gustavo Ochoa thought his leg was "breaking off at the knee" (encl. 6J-6N). Although PO Gustavo Ochoa did not recall if he took any actions besides punching § 87(2)(b) to break his grip, it is reasonable to conclude that, in response and in the heat of the moment, PO Gustavo Ochoa kicked § 87(2)(b) to try to get his foot free.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED] None of the officers interviewed acknowledged observing any injuries on § 87(2)(b) prior to the incident in the stationhouse. However, medical records from § 87(2)(b) confirm that § 87(2)(b) had a right medial orbital wall fracture, a right orbital floor fracture, and displaced fractures of the left transverse processes at L2 and L3. He was hospitalized for seven days following the incident (See Medical Records Folder). § 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

Allegation G: Force—Officers used physical force against § 87(2)(b) at the 42nd Precinct Stationhouse.

In his intake call, § 87(2)(b) alleged that, in addition to the force used by PO Peguero, PO Gustavo Ochoa, and PO Munrett as discussed above, additional officers also hit him while in the holding cell area and that, after he was placed in handcuffs, officers lifted him up, swung him, and tossed him into a cell (encl. 1Y-2B). In his IAB interview, § 87(2)(b) alleged that multiple officers punched and kicked him in the holding cell area (encl. 2E-2I). In his written statement, § 87(2)(b) alleged that multiple officers punched him while he was in the holding cell area and that he was swung into a holding cell and dropped on the ground (encl. 2K-2R). In his CCRB interview, § 87(2)(b) alleged that several uniformed officers punched and kicked him while he was in the holding cell area and that he was lifted up and swung into a holding cell, at which point he was dropped face down on the ground (encl. 2U-2Y).

Aside from the acknowledged use of force discussed above (see **Allegations D, E, and F**), none of the officers interviewed acknowledged using additional physical force against § 87(2)(b) at the 42nd Precinct Stationhouse or observing any officer do so (encl. 3T-3W, 4D-4H, 4X-5D, 5K-5P, 5V-5Y, 6E-6F, 6J-6N). § 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date